

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM T. WHITMAN, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

STATE FARM LIFE INSURANCE
COMPANY, an Illinois corporation,

Defendant.

NO. 3:19-cv-06025-BJR

DEFENDANT STATE FARM LIFE
INSURANCE'S RESPONSE TO
PLAINTIFF'S MOTION TO SEAL

Pursuant to this Court's LRC 5(g)(3)(B), Defendant State Farm Life Insurance Company ("State Farm") hereby responds to Plaintiff's Motion to Seal (Dkt. 65) and seeks an order sealing the exhibits filed in connection with Plaintiff's Motion for Class Certification.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a Motion for Class Certification on February 16, 2021. Plaintiff moved to file under seal the following confidential documents subject to the protective order entered in this action (ECF No. 48) that were filed with Plaintiff's motion for class certification and the Declaration of Scott J. Witt in support of the same:

STATE FARM LIFE'S RESPONSE TO
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Mines
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1 1. Certain annual statements for Plaintiff's life insurance policy at issue in
2 this case, attached as Exhibit C to the Declaration and Report of Scott J. Witt;

3 2. Certain illustrations for Plaintiff's life insurance policy at issue in this
4 case, attached as Exhibit D to the Declaration and Report of Scott J. Witt;

5 3. The transcript of the November 7, 2017, deposition of Defendant State
6 Farm Life Insurance Company ("State Farm") employee and expert Carl Streily in
7 *Vogt v. State Farm Life Ins. Co.*, 16-4170-CV-C-NKL (W.D. Mo.), attached as
8 Exhibit E to the Declaration and Report of Scott J. Witt;

9 4. The transcript of the December 8, 2017, deposition of State Farm
10 employee and designated representative Tony Phipps in *Vogt v. State Farm Life*
11 *Ins. Co.*, 16-4170-CV-C-NKL (W.D. Mo.), attached as Exhibit F to the
12 Declaration and Report of Scott J. Witt;

13 5. The Form 94030 New Jersey Actuarial Memorandum, attached as
14 Exhibit G to the Declaration and Report of Scott J. Witt;

15 6. The Form 94030 South Carolina Actuarial Memorandum, attached as
16 Exhibit H to the Declaration and Report of Scott J. Witt;

17 7. The transcript of the November 30 through December 1, 2017,
18 deposition of State Farm employee and designated representative Jeff Holzbauer
19 in *Vogt v. State Farm Life Ins. Co.*, 16-4170-CV-C-NKL (W.D. Mo.), attached as
20 Exhibit I to the Declaration and Report of Scott J. Witt;

21 8. An October 4, 2001, internal email produced by State Farm re:
22 "Mortality Assumption Documentation," attached as Exhibit J to the Declaration
23 and Report of Scott J. Witt;

9. A 2001 actuarial memorandum for the repricing of Form 94030 produced by State Farm, attached as Exhibit K to the Declaration and Report of Scott J. Witt;

10. The February 28, 2018, declaration of Jeff Holzbauer in *Vogt v. State Farm Life Ins. Co.*, 16-4170-CV-C-NKL (W.D. Mo.), attached as Exhibit L to the Declaration and Report of Scott J. Witt;

11. The transcript of the November 30, 2017, deposition of State Farm employee and designated representative at trial Alan Hendren in *Vogt v. State Farm Life Ins. Co.*, 16-4170-CV-C-NKL (W.D. Mo.), attached as Exhibit M to the Declaration and Report of Scott J. Witt;

12. The Declaration and Report of Scott J. Witt;¹

13. Plaintiffs' motion in limine filed as ECF No. 265 in *Vogt v. State Farm Life Ins. Co.*, 16-4170-CV-C-NKL (W.D. Mo.), attached as Exhibit 1 to Plaintiff's Motion for Class Certification; and

14. The November 12, 2020, Declaration and Report of Scott J. Witt as served on State Farm in *Bally v. State Farm Life Ins. Co.*, 18-cv-04954-CRB (N.D. Cal.) ("Bally"), attached as Exhibit 3 to Plaintiff's Motion for Class Certification.

State Farm agrees with Plaintiff that the documents referenced in the above-numbered paragraphs should be filed under seal. In addition to the rationale provided in Plaintiff's motion, sealing is necessary for the documents referenced in paragraphs 3-14 because those documents

¹ It appears that Plaintiff inadvertently refers to document no. 12 in his motion to seal as "Certain reference to State Farm's internal cost of insurance and mortality rates in the Declaration and Report of Scott J. Witt." State Farm's understanding is that the actual request is to seal the entire Declaration and Report of Scott Witt due to the references to State Farm's confidential internal cost of insurance and mortality rates in Mr. Witt's Declaration and Report.

1 contain information that State Farm considers to be proprietary and confidential actuarial
 2 information as well as trade secrets pertaining to its cost of insurance rates and business strategy.
 3 Accordingly, compelling reasons support the sealing of the documents.

4 **II. COMPELLING REASONS JUSTIFY AN ORDER SEALING**
 5 **STATE FARM'S CONFIDENTIAL BUSINESS INFORMATION**
 6 **AND TRADE SECRETS.**

7 **A. Legal Standard.**

8 While courts start with “a strong presumption in favor of access to court records,” they
 9 also “remain mindful of the parties’ right to access those same courts upon terms which will not
 10 unduly harm their competitive interest.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,
 11 1135 (9th Cir. 2003); *Apple Inc. v. Samsun Elecs. Co., Ltd.*, 727 F.3d 1214, 1228-1229 (Fed. Cir.
 12 2013). For documents in support of a motion for summary judgment, the proponent seeking an
 13 order sealing them “must meet the ‘compelling reasons’ standard and not the lesser ‘good cause’
 14 determination.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1177 (9th Cir. 2006)
 15 (quoting *Foltz*, 331 F.3d at 1135). A “compelling reason” that supports sealing court records
 16 exists “when such court files might have become a vehicle for improper purposes, such as the use
 17 of records to gratify private spite, promote public scandal, circulate libelous statements, or release
 18 trade secrets.” *Kamakana*, 447 F.3d at 1179 (internal quotes and citation omitted). In evaluating
 19 a motion to seal, “courts should consider all relevant factors.” *Foltz*, 331 F.3d at 1135.

20 **B. The Documents Referenced in Paragraphs 3-14 Contain Trade Secret and**
 21 **Proprietary Information Regarding State Farm's Actuarial Analyses.**

22 The documents referenced in paragraphs 3-14 contain confidential and proprietary
 23 information involving State Farm's development of cost of insurance rates and actuarial pricing
 24 analyses that, if publicly disclosed, would result in a competitive disadvantage and negate the
 25 considerable time, expense and effort that State Farm has incurred to develop its cost of
 insurance rates. State Farm develops experience assumptions through analysis of multiple years

of experience across a vast population of insureds. (Holzbauer Dec. ¶ 5.) State Farm takes care not to disclose its assumptions to other competitors, as it would squander the competitive advantages that State Farm derives from the careful analysis State Farm actuaries perform of company experience. (Holzbauer Dec. ¶ 5-6.) State Farm spent considerable time and effort developing its cost of insurance rates and has undertaken reasonable efforts to maintain the secrecy of this proprietary confidential information. (Holzbauer Dec. ¶ 4.)

In addition, State Farm takes care to protect the private personnel information of its employees, both to protect the employee's privacy and to protect the company's investments in key employees. (Holzbauer Dec. ¶ 12.) State Farm employees sign secrecy agreements, information is only conveyed via secure electronic messaging, and State Farm uses non-disclosure agreements with third parties to ensure protection of its confidential, trade secret information. (Holzbauer Dec. ¶ 4.)

Sealing is necessary to protect State Farm's confidential trade secret information. (Holzbauer Dec. ¶ 7-12.) State Farm has not made the sensitive information in these documents public as it is competitively sensitive. (Root Dec. in Support of Sealing ¶ 4). Moreover, State Farm has not produced this information in litigation without first seeking protection of its trade secret, confidential information from courts. (Root Dec. in Support of Sealing ¶¶ 5-7). Whenever third parties have sought to access this information, State Farm has taken steps to prevent its public disclosure. (Root Dec. in Support of Sealing ¶ 8). This confidential information is valuable to State Farm and it would be valuable to a competitor or potential competitor. Plaintiff's counsel has not objected to sealing these materials to protect the confidentiality of this information in any matter.

III. CONCLUSION.

Therefore, State Farm respectfully asks that the Court grant Plaintiff's motion and enter an order sealing the documents identified therein.

1 DATED this 9th day of March, 2021.

2 BETTS, PATTERSON & MINES, P.S.

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CERTIFICATE OF SERVICE

I, Joseph D. Hampton, hereby certify that on March 9, 2021, I electronically filed the following:

- **Defendant State Farm Life Insurance's Response To Plaintiff's Motion To Seal; and**
- **Certificate of Service;**

with the Court using the CM/ECF system which will send notification of such filing to the following:

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